Supreme Court, U.S.
FILED

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

PETER D. MOSS, Pro Se - PETITIONER

VS.

STINNES CORPORATION; MICHAEL MOEBIUS, President; Dr.HANS-JUERGEN KNAUER, Chairman -- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Peter D. Moss
110-40 72nd Avenue 1C
Forest Hills, New York 11375
Phone 718 - 261 - 5985

QUESTIONS PRESENTED

1. Are pendent state law tort claims for uncontested and medically certified defense-inflicted emotional and physical damage claims arising in an Age Discrimination in Employment Act and New York Human Rights Law litigation disallowable by the bench solely to deny plaintiffs their 7th Amendment right to trial by jury of all issues?

2. Does entire controversy doctrine support intervention by spouse who meets the "intervention as of right" criteria under Civil Rule 24, in wife's age discrimination action, based on uncontested medical evidence of permanent emotional and physical harm inflicted by defendants' retaliatory and malicious prosecution, so as to enable petitioner to seek relief for pendent state tort claims for intentionally inflicted emotional and physical harm in one single action?

PARTIES AND PARENT OR SUBSIDIARY COMPANIES

Not all parties appear in the caption on the cover page. A list of all parties to the proceedings in the courts whose judgment is the subject of this petition is as follows:

Barbara M. Moss, pro se, plaintiff

Peter D. Moss, pro se, petitioner-intervenor (originally co-plaintiff)

Stinnes Corporation, defendant, wholly owned by VEBA AG, Germany's fourth largest corporation. VEBA AG is listed on the New York stock exchange.

Michael Moebius, defendant and president of defendant Stinnes Corporation at the time of the ADEA violation.

Dr. Hans-Juergen Knauer, defendant and chairman of Stinnes Corporation at the time of the ADEA violation.

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PETITION FOR A WRIT OF CERTIORARI

Peter D. Moss, pro se, respectfully petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals (App. 1 to App. 2) is to my knowledge as yet unpublished. The Order denying me rehearing and rehearing en banc (App. 3 to App.4) is to my knowledge as yet unpublished.

The opinion of the United States District Court for the Southern District of New York was published as Moss v. Stinnes Corp.,No.92 Civ.3788, 1997 WL 530113 (S.D.N.Y. Aug. 25, 1997) (App. 5 to App.8); see also Moss v. Stinnes Corp.,No.92 Civ.3788, 1993 WL 33591 (S.D.N.Y. Jan. 29, 1993) (App.5 to App.8).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The date on which the United States Court of Appeals decided my case was March 8, 1999. My petition for rehearing and rehearing en banc was denied on June 8, 1999. Thus this petition for certiorari is timely if filed or before September 7, 1999.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §621 et seq., prohibits age discrimination in employment and retaliation for complaining about it.

New York State Human Rights Law ("HRL"), New York Exec. Law §290 et seq. provides damages for age discrimination victims.

Civil Rule 24, 28 U.S.C. Rule 24, provides for intervention by persons in my situation.

Seventh Amendment, U.S. Constitution, provides for submitting damages such as ours to a jury for determination.

STATEMENT OF THE CASE

About 5 p.m. on November 11, 1991, petitioner's wife Barbara Moss, then 54, was suddenly and wrongfully terminated by Defendant Moebius, solely because he wanted a young secretary. At 54, Barbara was replaced by a 27-year old illegal alien woman so unqualified that she was denied a working visa before entering the United States. When we filed an ADEA complaint on May 26, 1992 as co-plaintiffs because the defendants reduced us from a two-paycheck family to a one-paycheck family and for emotional damages, the defendants responded by retaliation to destroy my wife's employability, followed by

systematically and intentionally inflicted emotional harm by tormenting us to destroy our will to exercise our lawful right to make ourselves whole, but also seriously impairing our physical and emotional health over the last 7 years, all of which were and continue to be caused by malicious prosecution (Amend.7) using willfully false and defamatory and perjured fabrications perpetrated by the defendants, their witnesses, and their attorneys, under color of a defense. Also, we were forced to provide intrusive and irrelevant discovery (including our tax, bank, and credit cards records) while the defendants never had to supply relevant and crucial discovery they did not want to produce. The documentation of these innumerable abuses now fills 8 transfer files, each 14 inches deep.

Incredibly and incomprehensibly, the record shows indisputably that all of this defense misconduct has been fully supported by the courts below. For further facts, judicial notice is respectfully directed to psychiatric expert reports on myself (App.12 to App.15) and on my wife Barbara (App.16 to App.20). Expert reports by a cardiologist, a dermatologist, five dentists, and a general practitioner appear in the record below and are incorporated here by reference and establish our emotional and physical damages (Amend.7) inflicted by the defendants' unrelenting and debilitating misconduct. We believe we are entitled to present these damages to a jury under the Seventh Amendment.

By December 1992 it was obvious that the

defendants do not have and never will have any defense for the violation of the Age Discrimination in Employment Act. Or December 14, 1992 we asked for permission to move for summary judgment and were denied permission the same day by memorandum endorsement. Over the next several years, my wife made repeated requests for permission to move for partial summary judgment on liability. At no time were the defendants able to articulate any defense for age discrimination, nor even propose a genuine question or issue of fact for a jury on age discrimination liability. Finally in 1998, after receiving permission to move for partial summary judgment on liability, we were threatened with a $15,000 sanction on the record in open court if we did not withdraw the motion. Why? Because the defendants could not come up with any genuine issue or question for a jury on liability in 10 tries over 7 years.

In its March 8, 1999 decision, a panel of the 2nd Circuit upheld the erroneous District Court decision that since I never worked for Defendant Stinnes, I could not prosecute the defendants for age discrimination. The record proves that I never even tried to complain of age discrimination against me, but only of intentionally inflicted emotional and physical harm from the defendants' retaliatory, malicious prosecution. Denying me intervention for a claim I did not raise avoids the intent of the procedural provision of Civil Rule 24 which supports my intervention. To my knowledge, all circuits have upheld a right of intervention without requiring the intervenor to present an

independent, separate cause of action under the same Act as the original plaintiff's original claim. Had these defendants age discriminated against me personally, I would of course have filed my own age action, not tried to intervene in my wife's action. The District Court Order removing me as co-plaintiff argues that I never worked for Defendant Stinnes and must therefore be removed (App.5) But its much larger flaw is buried in footnote 2 (App.7-8) which recognizes that we moved to add several state common-law tort claims but were denied permission because the magistrate judge said that we did not plead sufficiently outrageous defense conduct. When we submitted sufficiently outrageous substitute language, we were denied permission to amend our complaint. That was especially grievous to pro se's. It seems to me that we should have been permitted to amend our pleading and based on that, I should have been left as co-plaintiff. But worse yet was to come. The District Court Order denying me intervention (App.19 to App.20) says that "the Court finds no basis for reversing its earlier decision denying leave to assert such a claim. That, of course, disregards the damage inflicted on me between January 1993 and August 1997, documented by Dr. Henschel (App.12 to App.15) and in certifications by 6 other doctors.

REASONS FOR GRANTING THE PETITION

Certiorari should be granted to vindicate job discrimination victims' 7th Amendment right to trial by jury of serious and permanent emotional and physical harm

inflicted by defendants' malicious prosecution.

Certiorari should be granted to vindicate petitioner's right to intervene "as of right" under both Civil Rule 24, as well as under the entire controversy doctrine requiring the raising of all claims from a series of transactions in a single lawsuit for judicial efficiency . *Biotechnology General Corp. v. Genentech Inc.*, 80 F.3d 1553 (2 Cir.1996), *Stochastic Decisions v. DiDomenico,* 995 F.2d (2 Cir. 1993), *Bennun v. Rutgers State University,* 941 F.2d (3 Cir. 1991).

Certiorari should be granted to establish that malicious prosecution is not an acceptable defense for age discrimination and retaliation, expecting the discrimination victims to sicken and surrender.

If Certiorari is not granted, the discriminator defense bar will have legalized a new strategy to violate the age act with impunity while the victims are left as emotional and physical wrecks of malicious abuse by discrimination defendants.

In short, the defendants and the courts below have established a new way for discriminators to violate U.S. laws and the intent of Congress to eliminate discrimination from the work place and to compensate the victims. The Supreme Court should not support this new strategy. The public importance of halting this pattern of illegal misconduct which denies the civil and human rights of

America's older employees cannot be overemphasized.

CONCLUSION

This case presents an important new strategy for protecting employment discriminators who have no meritorious or even credible defenses of any sort.

The petition for a writ of certiorari should be granted to support U.S. laws and the intent of Congress to eliminate discrimination from the work place and to compensate the victims instead of emotionally battering victims into submission to the whims of unanswerable superiors protected by law firms specializing in protecting big corporations with unlimited wealth to finance frivolous defenses *ad infinitum*.

Respectfully submitted,

Peter D. Moss, petitioner pro se
110-40 72nd Avenue, Apt. 1C
Forest Hills, New York 11375
(718) 261-5985

App. 1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 1998

(Argued January 29, 1999 Decided Mar -8 1999)

Docket No. 97-9450

BARBARA M. MOSS, Plaintiff,

PETER D. MOSS, Plaintiff-Appellant,

— v.

STINNES CORPORATION; MICHAEL MOEBIUS, President; DR. HANS-JUERGEN KNAUER, Chairman,

Defendants-Appellees .

B e f o r e : NEWMAN, WALKER, and CALABRESI, Circuit Judges

Appeal from an order of the United States District Court for the Southern District of New York (Keenan, J.), denying plaintiff-appellant Peter D. Moss's motion to intervene in his wife Barbara M. Moss's action under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the New York State Human Rights Law, N.Y. Exec. Law § 290 et seq.

Affirmed.

PETER D. MOSS, Pro Se, Forest Hills, N.Y., for Plaintiff-Appellant

STANLEY L. GOODMAN, Esq.., Grotta, Glassman & Hoffman, P.A., Roseland, N.J., for Defendants-Appellees.

PER CURIAM:

Plaintiff-Appellant Peter D. Moss, appearing pro se, appeals from an order of the United States District Court for the Southern District of New York (Keenan, J.), denying plaintiff-appellant's motion to intervene in his wife Barbara M. Moss's action under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq., and the New York State Human Rights Law ("HRL"), N.Y. Exec. Law § 290 et seq.

We hold as have all other courts that have considered the question, that neither the ADEA nor the HRL affords a direct cause of action to a non-employee due to discrimination against his spouse. Moreover, neither statute provides for a claim for loss of consortium. Accordingly, we affirm the order denying intervention for substantially the reasons stated by the district court. See Moss v. Stinnes Corp., No. 92 Civ. 3788, 1997 WL 530113 (S.D.N.Y. Aug. 25, 1997); see also Moss v. Stinnes Corp., No. 92 Civ.3788, 1993 WL 33591 (S.D.N.Y. Jan. 29, 1993).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

KAREN GREVE MILTON
ACTING CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 8th day of JUNE one thousand nine hunred and ninety-nine.

_____ /seal/

Moss
Appellant,

Filed
Jun-7 1999

v

Dkt No: 97-9450

Stinnes Corporation
Appellee.

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A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Peter D. Moss.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT
KAREN GREVE MILTON, Acting Clerk

/s/

By: _____
Beth J. Meador,
Administrative Attorney

p o ccc
inbanccdn_frm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA M. MOSS and PETER D. MOSS,
Plaintiffs,

-- against --

STINNES CORPORATION, et al.,
Defendants.

MEMORANDUM OPINION AND ORDER
92 Civ. 3788 (JFK)

JOHN F. KEENAN, United States District Judge:

Defendants have moved to dismiss Plaintiff Peter D. Moss for his failure to state a claim. Fed. R. Civ. P. 12(c). For the following reasons, the motion is granted.

BACKGROUND

On May 26, 1992, Plaintiffs pro se Barbara and Peter Moss filed a complaint alleging that Defendants fired Mrs. Moss in November 1991 because of her age, in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA"). Plaintiffs do not allege that Peter Moss was ever employed by Defendant Stinnes Corporation. Instead, Mr. Moss's claim is based solely on the allegation that he was emotionally and financially damaged by his wife's discharge because her salary was essential to the couple's well-being. See Complaint ¶ 9.

DISCUSSION

To state a claim under ADEA, a plaintiff must allege an employer-employee relationship between the plaintiff and defendant. See Asklar v. Honeywell, Inc., 95 F.R.D. 419, 424 (D. Conn. 1982). Peter Moss does not allege that he was ever employed by Stinnes: he alleges only that his wife was employed by them, and that she was wrongfully fired. Accordingly, Defendants' motion to dismiss his ADEA claim must be granted. See, e.g., E.E.O.C. v. Zippo Manufacturing Co., 713 F.2d 32 (3d Cir. 1983) (ADEA protects only employees); Asklar v. Honeywell, Inc., 95 F.R.D. 419, 424 (D. Conn. 1982) (former employee's widow had no standing to bring her own ADEA claim against her husband's former employer because no employer-employee relationship existed between her and company); Zavala v. G.D. Searle & Co., 56 FEP Cases (BNA) 1197, 1199-1200 (D.P.R. 1991) (non-employee spouse and conjugal partnership lacked standing as plaintiffs in ADEA action; ADEA provides personal cause of action available only to employees); see also Feng v. Sandrik, 636 F. Supp. 77 (N.D.Ill. 1986) (spouse of individual who was allegedly subject of employment discrimination not within class protected by Title VII); Ramos v. Roche Products, Inc., 694 F. Supp. 1018, 1026 (D.P.R. 1988) (Congress did not intend to provide remedy to spouse not employed by employer).

Plaintiffs assert that Peter Moss should be maintained as a plaintiff under the provisions of Federal Rule 20, which they assert allows any individual with a financial interest in the suit to join as a co-plaintiff. The Court rejects this argument. The explicit language of Rule 20 provides for the joinder of plaintiffs "if they assert any

right to relief jointly, severally, or in the alternative." Fed. R. Civ. P. 20(a). Rule 20(a) does not, as defendants observe, provide a cause of action for any individual who may have a financial interest in the litigation. It merely provides an individual who asserts a "right to relief" may be joined. Peter Moss has not identified any cause of action, or right to relief, against Defendants. Indeed, each of the cases cited above stands for the unremarkable proposition that ADEA provides a cause of action only to individuals having an employer-employee relationship with the defendant company. For these reasons, the motion is granted.

By letter dated November 23, 1992, Defendants ask that their motion be applied to Plaintiff's proposed amended complaint. Magistrate Judge Bernikow had granted in part Plaintiff's motion to amend their complaint, and this Court affirmed that recommendation by order dated November 19, 1992. [1] Plaintiffs were granted permission to amend their complaint to add three additional counts to their original ADEA claim. Two of the new counts allege further violations of ADEA: one alleges that Mrs. Moss suffered pay discrimination and another that she was given different, and presumably less comprehensive, health-care benefits. The third new count states a pendant claim for age discrimination under the New York State Human Rights Law.[2] Because the Amended Complaint will allege only

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1 To date, Plaintiffs have failed to file their amended complaint, although Magistrate Judge Bernikow has ordered them to do so by February 5, 1993.

2 Plaintiffs had also moved to add several state common-law tort claims to their action. That portion of their motion was

violations of employment discrimination laws with regard to Mrs. Moss's employment with Stinnes Corporation, Defendants' motion to dismiss Peter Moss as a Plaintiff as to these claims is also granted. Thus, only Barbara Moss remains as a Plaintiff.

SO ORDERED.

Dated: New York, New York
January 28, 1993

/s/

John F. Keenan
United States District Judge

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denied. See Report and Recommendation, November 10, 1992 (LB), aff'd, Order, November 19, 1992 (JFK).

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denied. See Report and Recommendation, November 10, 1992 (LB), aff'd, Order, November 19, 1992 (JFK).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA M. MOSS,

Plaintiff,

against

STINNES CORPORATION, MICHAEL MOEBIUS, President, and DR. HANS-JUERGEN KNAUER, Chairman, Defendants singly, severally and jointly,

Defendants.

MEMORANDUM OPINION AND ORDER
92 Civ. 3788 (JFK)

JOHN F. KEENAN, United States District Judge:

Before the Court is the motion of Peter Moss, Plaintiff Barbara Moss' husband, to intervene "as of right" in this action. Defendants oppose the motion. For the reasons set forth below, the motion is denied.

As the complaint currently stands, Plaintiff Barbara Moss pursues claims in this action under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq., and the New York State Human Rights Law ("HRL"), N.Y. Exec. Law § 290 et seq. Although Peter Moss was formerly a plaintiff in this action, by Memorandum Opinion and Order dated January 28, 1993,

the Court granted Defendants' motion to dismiss his claims from the Complaint for failure to state a claim based on alleged employment discrimination against his spouse.

Peter Moss now seeks to intervene as a plaintiff in this action in order to assert damage claims for loss of consortium and personal injuries caused by the stress of his wife's lawsuit. He also seeks to assert a state law claim for intentional infliction of emotional distress.

Under Fed. R. Civ. P. 24, a movant seeking intervention as of right must "set [ ] forth the claim . . . for which intervention is sought" and must demonstrate an interest in the event or events which are at issue in the pending litigation. Mr. Moss' motion to intervene is denied because his proposed claims in intervention fail to state a valid claim for relief.

First, as this Court held in its January 28, 1993 Memorandum Opinion and Order, Mr. Moss does not have any legally cognizable claim for relief under the ADEA or HRL based on the employment discrimination claims asserted by his wife. The ADEA applies only to employees and does not provide for claims of loss of spousal consortium. See EEOC v. Zippo Manufacturing Co., 713 F.2d 32, 35 (3d Cir. 1983) (the ADEA protects only employees and applicants for employment); Reed v. Johnson Controls, Inc., 704 F. Supp. 170, 172 (E.D. Wis. 1989) (no right of recovery under ADEA for non-employee spouse's loss of consortium). The same is true of the HRL. See Rich v. Coopervision, Inc., 198 A.D.2d 860, 861, 604 N.Y.S.2d 429, 430 (4th Dep't 1983) ("The spouse of a victim of alleged age discrimination has no cause of action for a violation of New York's Human Rights Law."); Belanoff v. Grayson, 98 A.D.2d 353, 358, 471 N.Y.S.2d

91, 94 (1st Dep't 1984) (no loss of consortium claim available for spouse of person aggrieved under HRL).

Second, Mr. Moss may not assert claims of intentional infliction of emotional distress. By Order dated December 14, 1992, this Court adopted Magistrate Judge Bernikow's November 10, 1992 Report and Recommendation denying then-plaintiffs Peter and Barbara Moss' motion to add claims for intentional infliction of emotional distress. Having reviewed Mr. Moss' grounds for seeking to assert an intentional infliction of emotional distress claim at this stage of the action, the Court finds no basis for reversing its earlier decision denying leave to assert such a claim.

Therefore, Peter Moss' motion to intervene as a plaintiff is denied. The Court declines, however, to follow Defendants' suggestion that it sanction Mr. Moss for making the motion.

SO ORDERED.

Dated: New York, New York
August 25, 1997

/s/

John F. Keenan
United States District Judge

App. 12

LEONARD P. HENSCHEL, M.D.
80-49 PARK LANE
KEW GARDENS, NY 11415

718-849-6339

April 12, 1997

Peter D. Moss
110-40 72 Ave.
Forest Hills, NY 11375

Sirs: re: Peter Moss

I have been asked to evaluate Mr. Peter Moss, a 68 year old married male, and to prepare this report at his request. I saw him on two separate occasions to evaluate his situation.

Mr. Moss claims he has had serious symptoms since his wife was suddenly terminated from her job as an administrative assistant and secretary to the president of a large corporation in 1991. He feels this was done unfairly because of her age. Apparently, she had been hired and worked for the retiring president. The new president is said to have hired an unqualified 27 year old to replace her, stating that her performance was unsatisfactory and in addition, would not give her a reference despite her years of good service. She was "badmouthed" among people in the German American community who might have hired her for a similar position, effectively ending her career. Mr. Moss claims he had to witness the

"destruction of his wife's career". He calls age discrimination a "scourge, junking people" and it "infuriates him".

Since this event, Mr. Moss and his wife have been consumed "emotionally and physically" by their attempts to handle their complaint of age discrimination through legal channels. He spends "almost all of his waking time" planning his wife's case taking time from other interests. He has lost the ability to concentrate or to think of anything else and notes intrusive thoughts of the issues while at work. The intensity of his effort has caused irritability and damaged his relations with his wife. His "life is hell". He suffers from Angina pectoris; his consumption of nitroglycerine has increased. He has insomnia, with difficulty falling asleep, depending on events current in the lawsuit, or constant planning strategies. Nightmares occur at least weekly wakening in a cold sweat and gritting his teeth. This bruxism has become a serious problem, he says, requiring a prosthesis. He doesn't read mail in the afternoon, fearing that to do so would interfere with sleeping later that night. He complains of a restless leg syndrome. He is convinced for a number of reasons, one of them a previous case in 1970 where he was certain "he lawyer sold him down the river", so that he must handle the case himself without legal help. In addition, he feels he can't give this effort up because of incurring legal cost. He constantly worries about their future. This intense work has caused irritability and damaged relations with his wife. Intrusive thoughts interrupt his regular job. He worries that a case which should have been handled in 18 months has

dragged on for five years, causing him to believe the company wants to wear him down and break his will. He regularly feels angry and frustrated. Further, he says he has been abused by the lawyers for this company who have called him an ugly little old man, a court jester lowering his self-esteem and adding to his distress

Mr. Moss was born in Hungary to an intact family. The family was broken up when he was sent to a concentration camp at Bergen-Belsen Germany at the age of 16. He was later released and traded for "war material", escaping to Switzerland. He reports no problems with the his life until the firing of his wife. He currently works as an environmental engineer for the EPA. He had been "downsized in 1985 and filed a complaint which was initially dismissed but ultimately upheld.

Mental Status

Mr. Moss is dressed neatly. He sits quietly throughout the interview. He is alert, able to concentrate, but occasionally looses his focus. He is able to speak spontaneously, verbosely, for the most part in a coherent and relevant manner although he tends to be tangential, preoccupied with his point of view. He is completely focused on his situation. Affective processes are broad and intense. Mood is depressed, at times tearful, labile, modulating readily, but congruent with thought. He easily becomes angry, indignant, irritable and agitated as he talks about the case and is at times tearful, worn out and exasperated. He is pessimistic about his situation and able to think in a logical and goal oriented manner with no signs

of delusions or hallucinations. Obsessive thought is noted. He is oriented in all three spheres and shows no memory difficulty.

Diagnosis

AxisI: Posttraumatic Stress Disorder with Depression and Obsessive thinking.
Axis II: No diagnosis
Axis III: Angina, Bruxism, Restless leg Syndrome

Mr. Moss was in good health until the trauma of his wife's loss of job. Since then he has been preoccupied with the legal situation unable to distance himself from this. Angina has been exacerbated and a number of physical signs of anxiety began, interfering with his life, work and socialization. The Axis I diagnoses are a consequence of the trauma he endures and the Axis III diagnoses are exacerbated by it.

Very truly yours,

/s/

Leonard P. Henschel, MD LFASAP
Diplomate, American Board
of Psychiatry and Neurology

App. 16

LEONARD P. HENSCHEL, M.D.
80-49 PARK LANE
KEW GARDENS, NY 11415

718-849-6339

August 26, 1997

To Whom it May Concern:

I have been asked to write the following medical evaluation for Mrs. Barbara Moss, a 60 year old woman, because of some questions raised as to her sanity plus she believes she requires a report for the legal issues she is pursuing. She came along to the office on August 9, 1997.

Mrs. Moss was terminated abruptly and without warning from her job as assistant to the president, a confidential job, handling payroll and money transfers, in February, 1992. She says she was so shocked she was unable to speak at first. She had always worked extremely hard. She had taken over another worker's job when hired and was aware she was managing two jobs. She says she was able to work well because she had a good ability t focus and concentrate. Before she was fired, she received good references and reports and could not understand the termination until she realized she was being replaced by an illegal alien woman, aged 27 much younger than herself. She was also expected to teach the job to this new person which she did for four months after her termination. As it

turned out the new girl only managed to do the typing and is no longer employed by this bank.

Mrs. Moss became highly distressed, angered and troubled, when she was convinced she was fired because of 'age discrimination'. She describes herself as a person who "keeps things inside". She has tried "logically to understand" what has happened, but is unable to do so. She believes 'holding things in' caused skin reactions: rashes and infections for which she came under dermatological care. She was sufficiently upset to require her physician to give her a stress test because of chest pains. The chest pains continue causing her to take Mylanta and Tylenol for this condition. She sleeps poorly because sleep is interrupted by dreams of faces of people from work and because of heart palpitations or chest pains. She apparently does sufficient kicking at night to waken her husband. She augments her sleep with naps. She "mopes" when she is along, yet can't be still, and is uncomfortable when people know about her situation and talk about it. She says she "tries not to be depressed", but is under the constant stress of litigation and its delays.

She spends her days working on her litigation, and calling employment agencies and advertisers as well as mailing job applications. This has caused strains in her marriage as she is irritable and has little patience besides her full-time preoccupation with age discrimination and fruitless job hunting. She finds that the litigation takes all her time. She says she sent 800 applications to no avail and has been told by an employment agency that her boss was "talking". When offered a new job, she was let go the next

day, with the comment they no longer needed her, leading her to believe there were efforts made to cause this or that her suing caused people not to hire her. She believes her condition would pick up again if she were able to get work.

She has been working with people all her life taking charge, managing etc., and now feels she is 'pushed into a corner' with her only outlet being to sit and waits for telephone. She doesn't feel comfortable staying at home and feels her life has diminished because of the loss of work.

Mrs. Moss was born in Germany to an intact family with 3 siblings. She reports no problems while growing up in East Germany. She had 12 years of school plus college leaving because she needed to work. She was also denied higher education because her father was not a communist party member. She did secretarial work. She came along to New York City in 1963 and married in 1965. She has no children. She reports no prior illnesses, but had been mugged causing some injuries to her back. She does not smoke or use drugs and rarely uses alcohol. She and her husband rarely do the things they used to do. She has little social life and misses her friends at work, maintaining some contact by telephone.

Mental Status

Mrs. Moss is dressed neatly. She sits quietly throughout the session showing no unusual mannerisms, but perspiration, restlessness, agitation and tension are noted. She is wordy, able to speak spontaneously, coherently and relevantly, but circumstantially. At times, she is easily

distracted. She is preoccupied with the loss of her job and her legal attempts to prove age discrimination and to obtain another job. Affective processes are full. Mood is congruent with thoughts and is downcast, somber, worn out and drained. Self-esteem is damaged. Anxiety is noted; she is harried, unable to relax. Her preoccupations interfere with thought. Somatic preoccupations are noted as is difficulty with abstractions. She is oriented in all 3 spheres and some errors are noted with places and dates. Memory is otherwise intact.

Diagnosis

Axis I: Posttraumatic Stress Disorder with obsessions, anxiety and depression. Panic Disorder Without Agoraphobia.
Axis II: No diagnosis.
Axis III: Various physical sequellae resulting from the Axis I diagnosis.

Mrs. Moss suffered a shock when she was suddenly deprived of her job which is very important to her. Further she is convinced that age discrimination is a factor. She attempted legal redress, but found insult and retaliation in the job marketplace adding to her difficulties. The loss of self-esteem, feelings of persecution, anxiety and depression as well as her need and inability to find work are

consequences of this.

Very truly yours,

/s/

Leonard P. Henschel, MD LFASAP
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